

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :21.02.2007

WP(C) No.13751/2006

ADITYA COLLEGE OF PHARMACY & SCIENCE

...Petitioner

- versus -

GURU GOBIND SINGH I.P. UNIVERSITY & ANR.

...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Asim Mehrotra with Ms Shikha Sapra
For the Respondent 1 : Mr G.D. Goyal.
For Respondent No.2 : Mr S.P. Arora.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in Digest? | YES |

BADAR DURREZ AHMED, J (ORAL)

1. This petition has been filed on behalf of the Aditya College of Pharmacy and Science. *Inter alia* the following prayers were made in the writ petition:-

- “a) Issue an appropriate Writ, direction or Order in the nature of mandamus commanding the Respondent to send students to the petitioner's college for the B. Pharmacy 1st year course academic session 2006-2007;
- b) Issue an appropriate Writ, direction or order in the nature of certiorari quashing the letter dated 11.8.2006 issued by the Respondent No.1.”

2. The learned counsel for the petitioner submitted that the dispute in the present case pertains to the question of affiliation of the petitioner with the respondent No.1 (Guru Gobind Singh Indraprastha University) (hereinafter referred to as 'the University'). The learned counsel submitted that the All India Council of Technical Education which is constituted under All India Council of Technical Education Act, 1987 (hereinafter referred to as the 'said Act') is the authority which grants approval for establishment of new technical colleges/institutions in view of the powers and functions granted under Section 10(k) of the said Act. He submitted that by virtue of letters dated 28.7.2006 and 11.8.2006 the AICTE had granted approval on the terms and conditions mentioned therein as also in the letter dated 8.5.2006. He submitted that on the strength of this approval granted by the AICTE, the University ought to have granted affiliation. Instead of doing so, the University issued the impugned letter dated 11.8.2006 which required the petitioner to furnish documents pertaining to details of permanent land / campus, Land Use Certificate, Allotment Papers, Ownership Documents, Safety Certificate from the Competent Authority, Layout Plan of the building duly sanctioned/approved by Competent Authority, fresh approval of AICTE for conduct of B Pharma programme for the Session 2007-08, No Objection Certificate of the Department of Training and Technical Education, Government of NCT of Delhi for the Academic Session 2007-08, Concurrence of Pharmacy Council of India and details of academic facilities in terms of lab, library and faculty.

These details were being sought for the Academic Session 2007-2008. Insofar as the Academic of 2006-2007 was concerned, the University, by the said letter dated 11.8.2006, informed the petitioner that its request for affiliation could not be acceded to since the admission period for B Pharma Programme was over in terms of the calendar. The second counseling was over and even the academic Session had commenced on 1.8.2006.

3. In view of the said letter of 11.8.2006 and in view of the fact that the passage of time has rendered it is impossible to grant affiliation for the Academic Year 2006-2007, the letter dated 11.8.2006 is only relevant for the purposes of the Academic Year 2007-2008. Since various stipulations had been made in the letter requiring the petitioner to furnish documents and details and approvals, the learned counsel for the petitioner has raised the issue that all these details are not necessary for the purpose of grant of affiliation particularly when AICTE has already granted approval. However, it must be noted that the approval that has been granted by the AICTE was for the Academic Year 2006-2007 and not for the Academic Year 2007-2008. The learned counsel for the petitioner points out that an application for grant of approval by AICTE for the Academic Year 2007-2008 has also been made to the AICTE and the same is under consideration. He is only concerned about the additional requirements that the University is placing upon the petitioner by virtue of the impugned letter dated 11.8.2006.

4. The learned counsel for the petitioner referred to the decision of the Supreme Court in the case of *Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another: (2000) 5 SCC 231.*

Paragraph 8 of the said decision sets out the points which arose for consideration before the Supreme Court which reads as under:-

“8. The following points arise for consideration:

- (1) Whether in view of the judgment of this Court in *State of T.N. v. Adhiyaman Educational & Research Institute: (1995) 4 SCC 104* the provisions of the AICTE Act, 1987 occupied the field and it was not necessary to obtain the further approval of the Government or other authority ? Whether any statute in the State of Kerala if it required such approval, would be void ?
- (2) Whether the orders of rejection passed by the State Government were valid on merits and whether the University should have granted further orders to continue the affiliation solely on the basis of AICTE permission ?”

5. Insofar as point No.1 was concerned, the same was answered by holding that because Section 10 (k) of the said Act vested the powers of granting approval in the IACTE, the Tamil Nadu Act of 1976 and the University Act 1923 (which were the statutes relevant for that case) could not deal with any question of “approval” for establishment of technical institutions.

The Supreme Court concluded that all that was necessary was that under the Regulations, the AICTE Council had to consult the State and the University. It further concluded in paragraph 22 and 23 as under:-

“22. As held in *T.N. case* the Central Act of 1987 and in particular Section 10 (k) occupied the field relating to “grant of approvals” for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9 (7), they merely required the University to obtain the “views” of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10 (k) of the AICTE Act, 1987 and would again be void. As pointed out in *T.N. case* there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the State Government and the universities concerned. The State-Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in *T.N. case* it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for “approval” of the State Government.

23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would

have been repugnant to the AICTE Act. The University Statute 9 (7) merely required that the “*views*” of the State Government be obtained before granting affiliation and this did not amount to obtaining “approval”. If the University statute required “approval”, it would have been repugnant to the AICTE Act. Point 1 is decided accordingly.”

6. In respect of point No.2 the Supreme Court observed that the only requirement, as per the statute concerned therein, was for the University to obtain “views” of the State Government and that did not amount to obtaining its approval. The procedure and conditions for affiliation could not be inconsistent with the provisions of the AICTE and, in particular Section, 10(k) of the Act and the University could not seek approval of the Government. The Supreme Court further pointed out that the University was also one of the agencies consulted by the council of AICTE under Regulation 8. Once that was over, and approval was granted by AICTE, if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring those facts to the notice of AICTE so that the latter could take appropriate action. Ultimately, the Supreme Court concluded in the following words:-

“30. Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations.”

7. The observations of the Supreme Court in the decision of *Jaya Gokul (supra)* in paragraph 30 are definitive for deciding this case. The Supreme Court held that the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations. This clearly indicates that, although approval / recognition and affiliation are two separate things, the University while granting affiliation, cannot insist upon any factor which is inconsistent with what is provided in the said Act and / or Regulations framed thereunder. In this context, therefore, this petition can be disposed of with the direction that the application for the academic session 2007-08 which has already been filed by the petitioner before AICTE will be processed in terms of the said Act and Regulations framed thereunder. It is also understood that this recommendation / approval is granted on a year to year basis and that too, after inspection being carried out on behalf of AICTE. The AICTE has to consult the University and other concerned agencies but this does not mean that AICTE would be bound by their views, as clarified by the Supreme Court, while granting approval. Once, the AICTE grants approval, the question of affiliation shall be considered by the University upon the petitioner moving an application for that purpose with the University, which shall dispose of the said application without insisting upon factors which are inconsistent with the AICTE Act or its

Regulations. The Notification dated 1.11.1999 and Statute 24 of the University shall be applicable to the case of affiliation of the petitioner only to the extent they are not inconsistent with the said Act and the Regulations framed thereunder.

8. With these directions, this writ petition stands disposed of. No costs.

**BADAR DURREZ AHMED
(JUDGE)**

February 21, 2007
J